

CONTRACTING FOR A & E SERVICES

TEXT REFERENCE

FEDERAL ACQUISITION INSTITUTE

CURRICULUM OF PROCUREMENT
TRAINING COURSES

CURRENT THROUGH
FAC 90-26

**OFFICE OF ACQUISITION POLICY
GENERAL SERVICES ADMINISTRATION**

INTRODUCTION

THE FEDERAL ACQUISITION INSTITUTE (FAI) CURRICULUM

Courses

In FY91, the FAI began providing acquisition trainers and educators with instructional materials for a new Contract Management curriculum. This curriculum includes the following courses, listed in a recommended order of attendance.

1. Introduction to Contracting*
2. Procurement Planning*
3. Simplified Acquisition/FACNET**
4. Contracting By Sealed Bidding*
5. Price Analysis*
6. Contracting By Negotiation*
7. Cost Analysis*
8. Contract Negotiation Techniques**
9. Contract Administration*
10. Contract Law
11. Types of Contracts
12. Source Selection*
13. Advanced Negotiation Procedures***
14. Advanced Cost and Price Analysis**
15. Advanced Contract Administration**
16. Termination/Claims

Specialized Courses

(in alphabetical order)

1. Acquisition of FIP Resources**
2. Contracting for Architect/Engineer Services*
3. Construction Contracting*
4. Managing the Contracting Activity
5. Contracting Officer Technical Representative***

Offerors

Each of the above courses will be offered by the GSA Interagency Training Center. Other Federal acquisition trainers and educators are incorporating FAI instructional materials into their respective curricula (perhaps under different course titles than the above).

* Currently available (as of 4 / 95)

** Projected to be available in 1995

*** Projected to be available in 1996

TYPES OF FIXED-PRICE CONTRACTS

Economic Price Adjustment

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies.

Incentive

This method provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost, to total target cost.

Prospective Price Redetermination

This type provides for (a) a firm fixed price for an initial period of contract deliveries or performance and (b) prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

Level of Effort Term

This method requires (a) the A-E firm to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms, and (b) the Government to pay the A-E firm a fixed dollar amount.

Exhibit 2-9

Cost-Reimbursement Contracts

Cost-reimbursement contracts are used in A-E contracting, especially in the environmental services arena. In the environmental arena there are many uncertainties involved in contract performance, especially during the identification stage. These uncertainties do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

Cost-reimbursement contracts may be used only when:

- Contractor's accounting system is adequate for determining costs applicable to the contract and,
- Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

Determining Allocability:

A cost is considered allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship.

A cost is allocable to a Government contract if it:

1. Is incurred specifically for the contract,
2. Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received, or
3. Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

Determining Reasonableness:

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by an A-E. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the A-E to establish that such cost is reasonable.

Cost and Pricing Data

The submission and subsequent certification of cost and pricing data as to accuracy, completeness, and currency are also required for A - E contracts or modifications expected to exceed \$500,000.

Cost and pricing data for A-E contracts consists of all facts which can be verified, existing up to the time of the agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on price negotiations. Examples include:

- Subcontractor quotations.
- Nonrecurring costs.
- General and administrative expenses.
- Changes in architectural engineering and drafting methods.
- Anticipated business volume increases.
- Any other management decisions affecting costs.

4.6 Obtain Approvals and Issue Contract

At the conclusion of each negotiation, prepare a Price Negotiation Memorandum (PNM) which summarizes the negotiations and other necessary contract actions prior to contract award. Discuss the following:

- Revised A-E fee proposal.
- Revised Government estimate.
- Revised scope of work.
- Statement on reasonableness of price.
- Variations from Audit recommendations.
- Certification of funds.

The PNM narrative must include enough detail to reflect the significant considerations controlling the establishment of the final price and other contract terms. It must show the updated costs in the Government's objective, including all new facts and interpretations of old facts that persuaded the Government to move from its prenegotiation objectives, if in fact they did, to the agreed price.

The amount of documentation needed depends on the size and complexity of the project. If the contract action is relatively small and is awarded as a result of price analysis alone, the documentation need not be elaborate and as detailed as for an award based on certified cost and price analysis and an audit.

The PNM establishes the basis for the reasonableness of the agreement which you have reached with the A-E and is the permanent record of the decisions made along the way. You may not be around in the future to help reconstruct events, so clear tracks must be provided so that others can follow your rationale. However, excessive detail and individualized jargon and opinions have no place in the document.

Some agencies have a policy whereby a resume of negotiation proceedings, with a particular reference to details of the mutual understanding between the Government and the A-E, is executed and signed by the A-E and the Government negotiators. Under no conditions should the resume of negotiations reflect any of the information contained in the original or revised Government estimate.

Certification of Cost & Pricing Data

Submission and certification as to accuracy, completeness, and currency of cost and pricing data is always required prior to the award of a negotiated contract or modification exceeding \$500,000.

The certification must be made as of the date agreement is reached on price. Adjustments to contract price may be made after award if the data

What the courts have used as a measuring stick in deciding reasonableness of delays in an A-E situation is to ask the question:

What is considered a reasonable time for the Government to perform a specified act?

In instances where A-E firms have been able to divert their design efforts to other aspects of the project, the courts have ruled that no unreasonable period of time has occurred. Also, when A-E firms have experienced a lengthy delay, but shifts the firm's efforts to other projects, the courts have found the delay reasonable.

Therefore, much depends on the court's review of surrounding circumstances, including the

- A-E's allocation of risk,
- Firm's particular needs at the time,
- Convenience to the Government, and
- Foreseeable consequences of the Government's action or inaction.

The A-E always bears the burden of proof on the unreasonableness of Government delays.

5.6 Contract Modifications

Every A-E contract presupposes the possibility of differences arising between the Government and the A-E, causing modifications to the contract to be issued. In design contracts, a contract modification is an action which may

- cause a shift in the future design effort, or
- alter the end product of the design.

It generally increases or decreases design cost, time, or both. Some modifications may not alter the contract price if ① design effort has not been expended and ② the effort required by the change is similar to that in the existing contract.

During the life of the contract, changes in the requirements for services to be accomplished will generally occur. The cause of design contract modifications are numerous. Exhibit 5-13 explores some of the reasons.

The effect of a Government directed change to the design contract may result in an **increase** or **decrease** in the design effort. It may also affect other design phases. For instance, an earlier completed design phase may have to be redesigned and future design phases extended, thus causing slippage to design schedules which amount to additional cost to the Government.